

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
FILE NO. 5:23-CV-00306-M-RN

CHRISTIAN PROFFITT,	)	
	)	
Plaintiff,	)	<b>NCDPS’S RESPONSE IN OPPOSITION</b>
	)	<b>TO PLAINTIFF’S MOTION FOR</b>
v.	)	<b>DEFAULT JUDGMENT [D.E. 11]</b>
	)	
NORTH CAROLINA DEPARTMENT OF	)	
PUBLIC SAFETY,	)	
	)	
Defendant.	)	

NOW COMES Defendant, North Carolina Department of Public Safety (“NCDPS”), by and through undersigned counsel, and hereby responds to the Motion for Default Judgment [D.E. 11] as follows:

**STATEMENT OF THE CASE**

On June 8, 2023, Plaintiff, Christian Proffitt (“Plaintiff”), filed her initial Complaint alleging violations of the Americans With Disabilities Act. [D.E. 1] On August 11, 2023, the Court ordered Plaintiff to file an amended complaint within 14 days. [D.E. 5] On August 16, 2023, Plaintiff filed her Amended Complaint. [D.E. 6] On August 22, 2023, the Court issued its Order concluding that Plaintiff’s lawsuit should be allowed to proceed. [D.E. 7] On August 8, 2023, the Court issued a Summons to NCDPS. [D.E. 8] On September 26, 2023, the U.S. Marshals Service filed a Process Receipt and Return containing the handwritten notation that the date of service upon NCDPS was “9/1/23,” with an attachment reflecting the U.S. Post Office tracking information. [D.E. 10] On September 27, 2023, Plaintiff filed the subject Motion for Default Judgment (“Motion [11]”). [D.E. 11] On September 29, 2023, Plaintiff filed a Certificate of Service indicating that she served her Motion [11] upon NCDPS, in the person of Ashby T. Ray, on September 28, 2023. [D.E. 12]

## **STATEMENT OF FACTS**

NCDPS hereby incorporates, as if fully set forth, the Statement of Facts in its Memorandum of Law in Support of NCDPS's Motion to Dismiss [D.E. 15] filed contemporaneously herewith.

## **ARGUMENT**

To obtain a default judgment, a party must first seek an entry of default under Federal Rule of Civil Procedure 55(a). *Justice v. M.N.S. & Associates, LLC*, 638 F.Supp.3d 554, 558 (W.D.N.C. 2022) (quotations and citation omitted). Here, the docket reflects that Plaintiff did not seek an entry of default in this matter prior to filing her Motion [11]. Thus, her Motion [11] should be denied.

Furthermore, a court must have personal jurisdiction over the defendant to render a valid default judgment. *Id.* at 559. For the reasons stated in NCDPS's Memorandum of Law in Support of NCDPS's Motion to Dismiss [D.E. 15], filed contemporaneously herewith and incorporated herein as if fully set forth, the Court does not have personal jurisdiction over NCDPS. Specifically, the court lacks personal jurisdiction over NCDPS as a result of insufficient service of process and insufficient process. For that reason, as well, Plaintiff's Motion [11] should be denied.

## **CONCLUSION**

In light of the foregoing, Plaintiff's Motion [11] should be denied.

This is the 22nd day of October, 2023.

**JOSHUA H. STEIN**  
**Attorney General**  
/s/ James B. Trachtman  
James B. Trachtman  
Special Deputy Attorney General  
N.C. State Bar No. 22360  
N.C. Department of Justice  
Public Safety Section  
Post Office Box 629  
Raleigh, North Carolina 27602-0629  
Telephone: (919) 716-6943  
Facsimile: (919) 716-6761  
E-Mail: jtrachtman@ncdoj.gov

**CERTIFICATE OF SERVICE**

I hereby certify that, on the above date, I electronically filed the foregoing **NCDPS'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT [D.E. 11]** with the Clerk of the Court utilizing the CM/ECF system and, on the date below, have caused to be served said document upon the Plaintiff, a non-CM/ECF participant via United States Mail, first-class, postage prepaid addressed as follows:

Christian Proffitt  
1533 Ellis Road  
B206  
Durham, NC 27703

This the 23rd day of October, 2023.

/s/ James B. Trachtman  
James B. Trachtman  
Special Deputy Attorney General